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Information and technical means as a guarantee of criminal proceedings objectivity

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ABSTRACT

The article analyzes the use of information and technical means in criminal proceedings regulated by legal norms. Familiarization with the protocol of interrogation, physical confrontation, submission for identification, conducted via video conference, by announcing it to the participants cannot be considered an adequate guarantee of the reliability of the correctness of the presentation of testimony in the protocol in the absence of a video recording. Despite the fact that the Criminal Procedure Code of the Russian Federation establishes the mandatory video recording of investigative actions conducted using video conference systems, its absence in investigative and judicial practice is not uniformly assessed as a material violation of the law. Similarly, there is no uniform practice in assessing the absence of an audio recording of a court hearing as a basis for the remission of a sentence by a higher court. An audio protocol as a guarantee of the reliability of the court hearing protocol, primarily in terms of presenting the testimony of participants in a criminal case interrogated during the trial, is of particular importance in view of the change in the rules for announcing a sentence, which are reduced to announcing only its introductory and operative parts, and the immutability of the procedure for handing copies of the sentence to the convicted or acquitted person, the defense attorney, and the prosecutor.

Keywords: investigative actions conducted via video conference; protocol; audio protocol; objectivity in criminal proceedings.

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Информационно-технические средства как гарантия объективности уголовного судопроизводства

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АННОТАЦИЯ

Анализируется регулируемое правовыми нормами использование в уголовном процессе информационно-технических средств. Ознакомление с протоколом допроса, очной ставки, предъявления для опознания, проведенных по видео-конференц-связи, путем оглашения участникам не может считаться надлежащей гарантией достоверности правильности отражения показаний в протоколе в отсутствие видеозаписи. При том, что УПК РФ закрепляет обязательность видеозаписи следственных действий, проводимых с использованием систем видео-конференц-связи, ее отсутствие в следственно-судебной практике единообразно не оценивается как существенное нарушение закона. Аналогичным образом не сложилось единообразной практики в оценке отсутствия аудиозаписи судебного заседания как основания для отмены приговора судом вышестоящей инстанции. Аудиопротокол как гарантия достоверности протокола судебного заседания, прежде всего, в части отражения показаний допрошенных в судебном следствии участников уголовного дела, приобретает особое значение ввиду изменения правил провозглашения приговора, сводящихся к оглашению только его вводной и резолютивной частей, и неизменности порядка вручения копий приговора осужденному либо оправданному, защитнику, обвинителю.

Ключевые слова: следственные действия, проводимые по видео-конференц-связи; протокол; аудиопротокол; объективность в уголовном процессе.

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INTRODUCTION

The efficiency of criminal proceedings depends not least on the deployment of state-of-the-art technologies and provision of the relevant regulatory framework, including guarantees of its participants' rights. The use of science and technology objectifies collected evidence and criminal proceedings in general. This goal is set when using information technology tools, including digital communication tools, during pre-trial and court proceedings in criminal cases, when analyzing their legal application model, and documenting the results.

The Russian Criminal Procedure Code provides for some procedural tools allowing to objectify criminal proceedings and solve relevant problems. These include the use of video conferencing systems in certain investigation procedures and audio recording of court hearings.

In theory of procedural criminal law, when deploying science and technology and assessing their performance, one shall address fundamental issues of procedural guarantees associated with the use of specific means and technologies in criminal proceedings to successfully achieve its objectives; procedural law regulation of their use; and ensuring its legal validity [1, p. 258]. In the premises, it is required to analyze the available results of the use of information technology tools in criminal procedures.

Use of video conferencing systems in individual investigative actions

The Federal Law dated December 30, 2021,¹ added Article 189.1 *Special Aspects of Interrogation, Confrontation, Identification Using Video Conferencing Systems* to the Russian Criminal Procedure Code. These amendments are introduced due to an obvious requirement given that cross-border crimes are increasingly frequent. Witnesses that have important information may be residing outside the Russian Federation or at a great distance from the location of preliminary investigation, and securing their appearance at the preliminary investigation location is sometimes very challenging, if at all possible. The law provides for a method to address the issue of their interrogation by instructing inquiry agencies to make an inquiry or use international cooperation tools. However, it does not allow to confront a witness.

Today, remote investigation and inquiry meet the requirements of criminal proceedings. It is worth noting that Article 189.1 of the Russian Criminal Procedure Code has been applied only since early 2022.

Back in 2015, the State Duma reviewed a draft law² proposing a much broader deployment of information technologies in criminal proceedings at the stage of preliminary investigation; such topics as examination, crime re-enactments, verification of testimony on site, taking samples for comparative examination, and review of procedural documents and expert opinions were also discussed in addition to interrogation, confrontation, and identification using video conferencing systems. This draft law was not passed at the time.

The procedural model for the use of video conferencing during interrogation, confrontation, and identification provided by Article 189.1 of the Criminal Procedure Code of the Russian Federation raises some questions on guarantees of achieving the objectives of criminal proceedings and legal validity of criminal proceedings.

First, the specified procedure for examining the investigation report by the interrogated person and a method of its certification, primarily by the signature of this participant, can hardly be defined as a procedural guarantee of the report validity.

Report of any investigation using video conferencing systems is made by the investigator or inquiry officer in charge of the criminal case. The interrogated person is supposed to review the text [2, p. 14] exclusively by reading out the record. This is indicated in the signed acknowledgment submitted to the investigator or inquiry officer to be attached to the report prepared by him or her (Part 3, Article 189.1 of the Russian Criminal Procedure Code). Thus, it is obvious that the interrogated person does not see this procedural document and, accordingly, is not allowed to read it himself or herself. It is a common knowledge that people have different aural perception. It is important to consider that the situation is unusual and often uncomfortable for the interrogated participant, even for a witness. The signature of this person in the signed acknowledgment, no doubt, certifies the fact that the investigation report has been read out. However, can it be considered a sufficient guarantee of accurate and reliable presentation of the testimony content? In this regard, the accuracy of the testimony in the investigation report shall be secured by a high-quality video record.

Second, the law provides that documents, materials, and a Warrant of Attorney (if he or she also participates in it to provide legal assistance to the interrogated person, the identifying witness, etc.) may be attached to the signed acknowledgment by the investigator at the registered address of the investigation participant during the investigation

¹ Federal Law No. 501-FZ *On Amendments to the Criminal Procedure Code of the Russian Federation*, dated December 30, 2021 // ConsultantPlus Law Assistance System.

² Draft Federal Law No. 764131-6 *On Amendments to the Criminal Procedure Code of the Russian Federation (In Relation to Preliminary Investigation Using Video Conferencing Systems)* // ConsultantPlus Law Assistance System.

(Part 6, Article 189.1 of the Russian Criminal Procedure Code). Here, we have a multi-level structure, i.e. the above documents are attached to the signed acknowledgment and the signed acknowledgment is attached to the investigation report. It means that documents, materials, and warrants are attached to the investigation report only as part of a signed acknowledgment. It would be more correct, if Part 6, Article 189.1 of the Russian Criminal Procedure Code captured that it is required to attach both a signed acknowledgment, the testimony signed by the interrogated person, as well as materials, documents, and the Warrant of Attorney to the investigation report.

Third, we mentioned the importance of video recording of investigation above and, according to Part 4, Article 189.1 of the Russian Criminal Procedure Code, it is mandatory. However, there is a question, what are the legal consequences, if the investigation is not recorded? in the meaning of Articles 7 and 75 of the Russian Criminal Procedure Code, such investigation report shall be treated as an inadmissible evidence as it is not compliant with the law. However, there are case laws when the court treated a report of interrogation of a witness under Article 189.1 of the Russian Criminal Procedure Code as an admissible evidence, despite the fact that the video record was not attached to the report and the criminal case did not even provide for the reason.³

There is an example of a similar case, where the witness interrogation report was deemed inadmissible in the court verdict and excluded from the list of evidence as there was no video records of the investigation procedure and no Warrants of Attorney who participated in the interrogation. But when discussing this situation in the verdict, it has a clause that “the prosecution did not file a motion to interrogate the participating lawyer and the field officer who conducted the interrogation on this matter.”⁴ So, it is highly likely that if those investigation participants were interrogated in court, the claims on admissibility of the interrogation report would have been lifted. However, given the importance of video recording of an investigation procedure as a guarantee of its legal validity and the reliability of the results, if it is not used during an investigation procedure with video conferencing

systems, this shall be grounds to treat such investigation report as an inadmissible evidence.

Audio Recording of Court Hearings

Another application of information technology in criminal proceedings is audio recording of open hearings in trial court and courts of appeal as provided by Article 259 of the Russian Criminal Procedure Code.

Similar to video recording of investigation using a video conferencing system, there is still no actual single approach to the legal treatment of a situation where there is no audio transcript of a court hearing.

In criminal procedure science, two basic issues associated with the court transcript [3, p. 220] and its methods have been repeatedly emphasized: the judge does not have it in the chambers during sentencing because the transcript is not ready by the time the judge retires there and the law does not require it to be ready; and tampering the transcript by changing its content to match the reasoning wording of the verdict.

Given the current level of information technology, artificial intelligence (“AI”) could be very useful in converting spoken language to text or transcribing audio to text. This way of deploying AI in criminal proceedings is feasible and useful from the point of view of both procedural efficiency and ensuring fair and complete presentation of the progress and results of the court hearing in the transcript. The court clerk would only need to verify that the recognized speech is correct, which could be done during the court hearing. Thus, the judge would retire into the chambers with a transcript containing mainly the testimony of the interrogated participants in the criminal case rather than only the criminal case file, which is exclusively presented by the prosecution.

A solution to the second issue, i.e. tampering the testimony in the transcript to match the text of the passed and announced verdict, was to be audio recording of the court hearing [4, p. 82]. When the State Duma reviewed Draft Law No. 507477-6 *On Amendments to the Civil Procedure Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation (in Relation to Court Hearing Recording Using Audio Recording Devices)*,⁵ the Explanatory Note to it indicated this issue as grounds to use audio records of court hearings.

It might seem that with the introduction of audio recording of court hearings of criminal cases, this issue could be forgotten, but for “technical reasons.” A criminal

³ Appellate Judgment of the Krasnodar Territory Court No. 22K-6056/2023 dated September 07, 2023. URL: https://kraevoi--krd.sudrf.ru/modules.php?name=sud_delo&name_op=case&uid=43c82e5d-6a8b-4f18-b183-b9e6179894ae&deloid=4&_caseType=0&_new=0&srv_num=1&_hideJudge=0 (accessed on December 06, 2024).

⁴ Verdict by Buinaksk District Court of the Republic of Dagestan dated October 27, 2022, in case No. 1-123/2022. URL: https://buinakskiy-rs--dag.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=131135005&case_uid=d62b9808-8bff-4072-99b6-ff63f4e82fc8&deloid=1540006&new= (accessed on December 06, 2024).

⁵ On Draft Federal Law No. 507477-6 *On Amendments to the Civil Procedure Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation (in Relation to Court Hearing Recording Using Audio Recording Devices)*. URL: <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=507477-6&02> (accessed on November 28, 2024).

case may contain, for example, an act or certificate made by a secretary stating that the audio records of a particular court hearing had not been saved for technical reasons. And if neither the transcript nor the information in is supported by an audio record, this does not suggest that it shall be unconditionally and necessarily treated as an inadmissible evidence. Inspecting courts has no clear position on setting judgments aside in such cases. In addition, the list of significant violations of the criminal procedure law in the law (Article 389.17 of the Russian Criminal Procedure Code) includes the failure to provide a court transcript, not an audio record.

It is required to discuss the importance of an audio record of the court hearing in connection with the new rules of proclamation of judgment,⁶ which is now reduced to reading out the introductory and operative clauses of the judgment.

A comprehensive analysis of Articles 298, 303, and 310 of the Russian Criminal Procedure Code allows to conclude that, during collegial consideration of the case, the judge or judges shall leave the chambers with a verdict⁷ rather than its introductory and operative clauses only. But only these clauses are read out. However, the rules of serving a copy of the verdict remain unchanged. The law includes no obligation to immediately serve a copy of the verdict to the convicted or acquitted person, the defense attorney, or the prosecutor. Thus, there is no guarantee that the verdict leaving the chambers is complete; there is no guarantee that its reasoning clause will not be tampered with (and in practice, there was a case when a judgment was set aside, because its printed reasoning clause did not match the audio record of the court hearing when it was read out).⁸

There is a discussion whether it is time to abandon the conventional court transcript as audio records are sufficient. However, the nature of transcripts in criminal proceedings is special because it is an evidence and the only way to record the testimony of interrogated participants in criminal proceedings during the trial and the content of this testimony may differ greatly from that

of the testimony of the same participant given during interrogation at the stage of preliminary investigation. This does not allow to abandon the conventional transcript. In addition, we shall consider an aspect associated with the time spent on reviewing the printed transcript and listening to the audio record for many hours to find a desired piece in it. It is obvious that a printed transcript is more convenient. In the premises, we have no doubt that it shall be used in criminal proceedings in its traditional documentary form. In this case, if neither the audio record (or, at least, a part of it) nor the transcript is provided, it shall be grounds to set aside or amend the judgment, because the evidence examined in the court hearing, which was not recorded by audio devices and saved, shall be treated as not examined with all corresponding procedural consequences, including the inability to reason the court findings in the case.

CONCLUSION

Video recording of investigation procedures, audio recording of court hearings are the tools inhibiting the distortion of testimony, contributing to fair evidence and criminal proceedings in general, and, consequently, its fairness. In this regard, it is required to treat the failure to make a video record as a significant breach of the Russian Criminal Procedure Code in terms of investigation using video conferencing systems. At the same time, we believe it possible to streamline the structure of the record of such investigation procedure by focusing on accurate presentation of its results. A video record will be a proof of respecting the rights of participants in the interrogation, confrontation or identification line-up.

If neither the full audio record nor the court transcript is provided, it should be unconditional grounds to set a court judgment aside. Whereas, if only a part of audio records of the court hearing is provided, it may be grounds to treat relevant evidence as unexamined and inadmissible for reasoning the facts of the crime in the verdict by court.

⁶ Federal Law No. 608-FZ *On Amendments to the Criminal Procedure Code of the Russian Federation*, dated December 29, 2022 // ConsultantPlus Law Assistance System.

⁷ *Criminal Procedure Acts: Textbook* / Galina V. Starodubova, Yury Yu. Astafiev, Ksenia M. Baeva [et al.], 4th ed., revised and enlarged. Moscow: Urait Publishing, 2024, p. 178.

⁸ Appellate Ruling of the Judicial Board for Criminal Cases of the Nizhny Novgorod Region Court No. 22-1616/2021 dated May 17, 2021. URL: https://oblsud--nnov.sudrf.ru/modules.php?name=sud_delo&srv_num=2&name_op=case&case_id=19171575&case_uid=c9382a98-156e-4482-badf-7f2aff0e6409&delo_id=4&new=4 (accessed on November 20, 2024).

REFERENCES

1. Gorsky GF, Kokorev LD, Elkind PS. *Problems of evidence in the Soviet criminal process*. Voronezh: VSU Publishing House; 1978. 303 p.
2. Belkin AR. The use of video-conferencing in investigative actions: technical advantages and procedural problems. *Criminal Justice*. 2022;(4):12–16. EDN: KPJLHZ doi: 10.18572/2072-4411-2022-4-12-16
3. Baev OY. About the record of the court session (critical analysis of article 259 of the RF CCP; proposals for its improvement). *Judicial power and criminal procedure*. 2015;(4):220–228. (In Russ.) EDN: UHWRDF
4. Starodubova GV. Glasnost of judicial proceedings as a guarantee of reliability of the record of the court session in a criminal case. *Legislation*. 2017;(11):80–84. EDN: ZWLXXF
5. Starodubova GV, Astafiev AY, Baeva KM, et al. *Criminal Procedural Acts*. 4th ed. Moscow: Yurait; 2024. (In Russ.) EDN: LPKCZF

СПИСОК ЛИТЕРАТУРЫ

1. Горский Г.Ф., Кокорев Л.Д., Элькинд П.С. Проблемы доказательств в советском уголовном процессе. Воронеж: Издательство ВГУ, 1978. 303 с.
2. Белкин А.Р. Использование видео-конференц-связи в следственных действиях: технические преимущества и процессуальные проблемы // Уголовное судопроизводство. 2022. № 4. С. 12–16. EDN: KPJLHZ doi: 10.18572/2072-4411-2022-4-12-16
3. Баев О.Я. О протоколе судебного заседания (критический анализ ст. 259 УПК РФ; предложения по ее совершенствованию) // Судебная власть и уголовный процесс. 2015. № 4. С. 220–228. EDN: UHWRDF
4. Стародубова Г.В. Гласность судебного разбирательства как гарантия достоверности протокола заседания суда по уголовному делу // Законодательство. 2017. № 11. С. 80–84. EDN: ZWLXXF
5. Стародубова Г.В., Астафьев А.Ю., Баева К.М., и др. Уголовно-процессуальные акты. 4-е изд. Москва: Юрайт, 2024. 456 с. EDN: LPKCZF

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